

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 12, 2016

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 02OD-402

OAHU

Amend Prior Board Action dated December 13, 2002, Item D-8, Grant of Term Non-Exclusive Easement for Seawall to Annie C. and Wayne D. St. Morris, Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-047:Seaward of 080

This amendment pertains to the removal of Annie C. St. Morris as a co-applicant and adding a condition which allows the easement to inure to the benefit of the abutting private property.

BACKGROUND:

On December 13, 2002, under agenda item D-8, the Board approved the subject request for a 55-year term, non-exclusive easement to Annie C. and Wayne D. St. Morris. A copy of the prior approval is attached as **Exhibit 1**.

REMARKS:

Upon review of the outstanding shoreline encroachment cases, staff noted that the Division received a copy of the Certificate of Death of co-applicant, Annie C. St. Morris, pertaining to the subject request.

For Board's reference, the Department of Accounting and General Services, Survey Division determined the final easement area to be 175 square feet, and the consideration of \$3,770 has been paid in 2011. Thereafter, staff learned that Annie C. St. Morris passed away in 2005, and the file remained inactive for a number of years. The surviving applicant has confirmed that he wants to acquire the easement in his individual capacity. Staff recommends the Board amend its prior action by granting the easement to the surviving co-applicant, Wayne D. St. Morris. Upon approval of today's request, staff will work with the Department of the Attorney General to finalize the document.

Also, in the event of any further changes to the ownership of the privately owned property, staff recommends that the Board amend the easement to inure to the benefit of the private property, to eliminate the consent needed from the Board regarding any future assignment(s). Staff's recommendation would serve to maintain consistency with the Board's current practice for issuing easements.

Staff did not solicit comments from other agencies, since the terms of the easement remain unchanged. There are no other pertinent issues or concerns.

RECOMMENDATION: That the Board amend its prior action of December 13, 2002, item D-8 by:

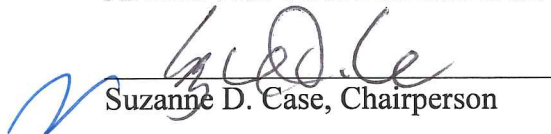
- A. Changing the applicant to Wayne D. St. Morris, tenant in severalty;
- B. Revising the easement area to 175 square feet; and
- C. Adding the following condition: "Throughout the term (unless sooner abandoned or otherwise terminated herein) this easement shall run with the land and shall inure to the benefit of the real property described as tax map key no. (1) 4-5-047:080, provided however, that the Grantee shall carry the required liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee's estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document."
- D. All other terms and conditions listed in its December 13, 2002 approval to remain the same.

Respectfully Submitted,



Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 13, 2002

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 02od-402

OAHU

Grant of a Term Non-exclusive Easement for Seawall to Annie C.
and Wayne D. St. Morris, Kaneohe, Koolaupoko, Oahu, Tax Map
Key (1) 4-5-47:80

APPLICANTS:

Annie C. and Wayne D. St. Morris, mother and son, (as joint tenants)
whose mailing address is Kaneohe, Hawaii
96744.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaneohe located seaward of (1) 4-5-
47:80 situated at Kaneohe, Koolaupoko, Oahu, as shown on the
attached map labeled Exhibit A.

AREA:

163 square feet, more or less, to be determined by Survey Division,
DAGS.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO x

APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

December 13, 2002

Item D-8

EXHIBIT "1"

CURRENT USE STATUS:

Unencumbered

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

Fifty-five (55) years.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During recent inspection, Coastal Land Program (CLP) staff observed the subject seawall appeared long established before 1974 i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Individual, not applicable

APPLICANTS REQUIREMENTS:

Applicants shall be required to

- 1) Pay for an appraisal to determine one-time payment; and
- 2) Provide survey map and description according to State DAGS standards and at Applicants' own cost (previously submitted).

REMARKS:

The applicant is one of the pier owners participating in the Kaneohe Piers Amnesty Program. During the preparation of the maps required for the issuance of the pier lease, a rock seawall was shown to be encroaching onto the State lands. According to the applicant, the seawall was constructed prior to 1962 when the applicant became the present owner. The applicant's survey map showing the encroachment and pier is attached as Exhibit B.

The Coastal Land Program (CLP) staff has determined that the issuance of an easement for the encroaching portion of the seawall and reclaimed land would have no adverse impacts on natural

resources, including beach resources and therefore has no objections to the issuance of an easement (see CLP letter, Exhibit C).

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff recommends the Board impose a fine of \$500 for the encroachment upon public lands pursuant to Section 171-6(12) HRS, since the encroachment was done without proper State Government authorization. The CLP did not pursue a Conservation District violation under Chapter 183C, HRS or any after the fact permitting for the subject structure.

RECOMMENDATION: That the Board

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term non-exclusive easement for seawall and landscape purposes Annie C. and Wayne D. St. Morris under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Impose a fine of \$500 for encroachment upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

Respectfully Submitted,



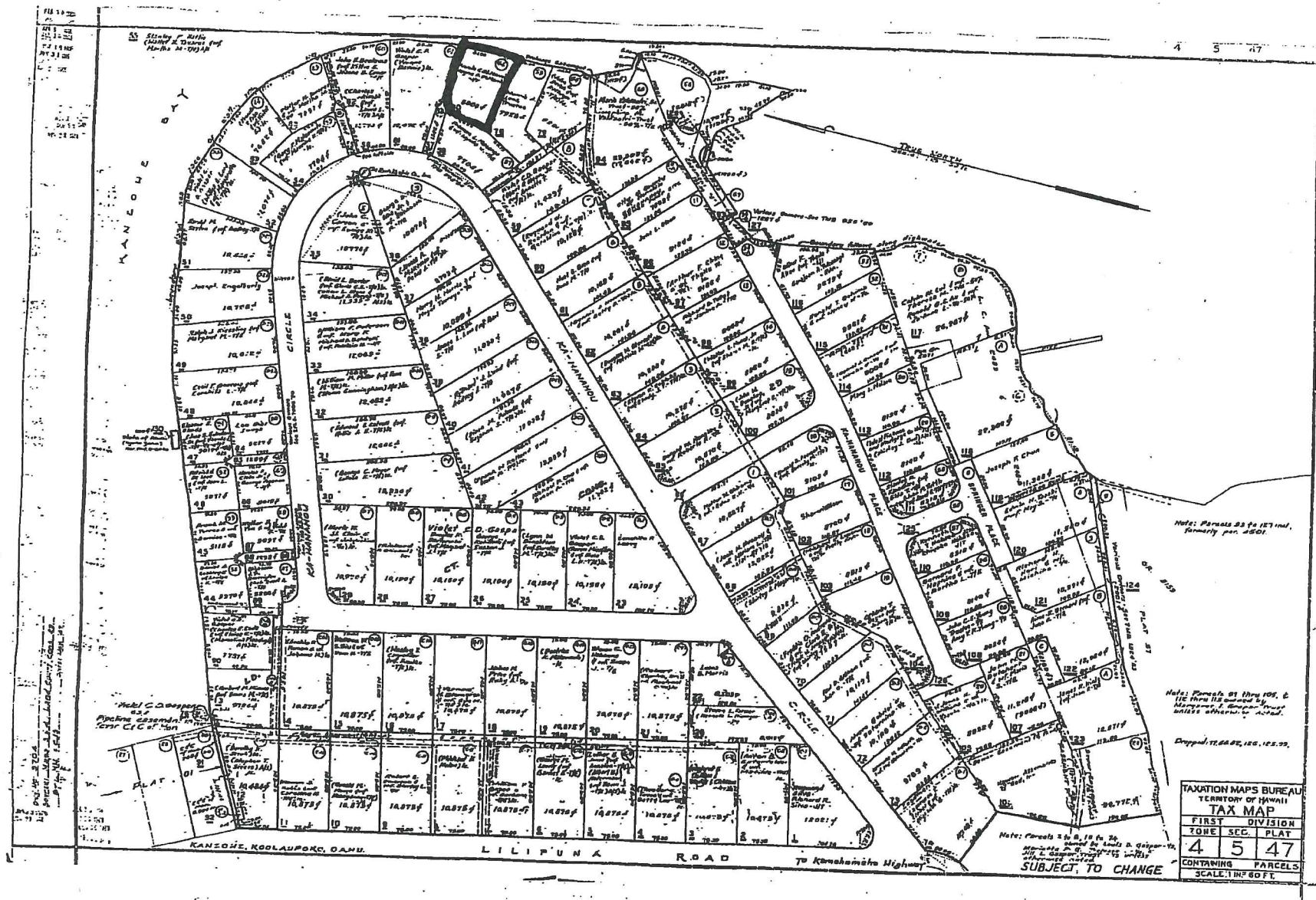
Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:

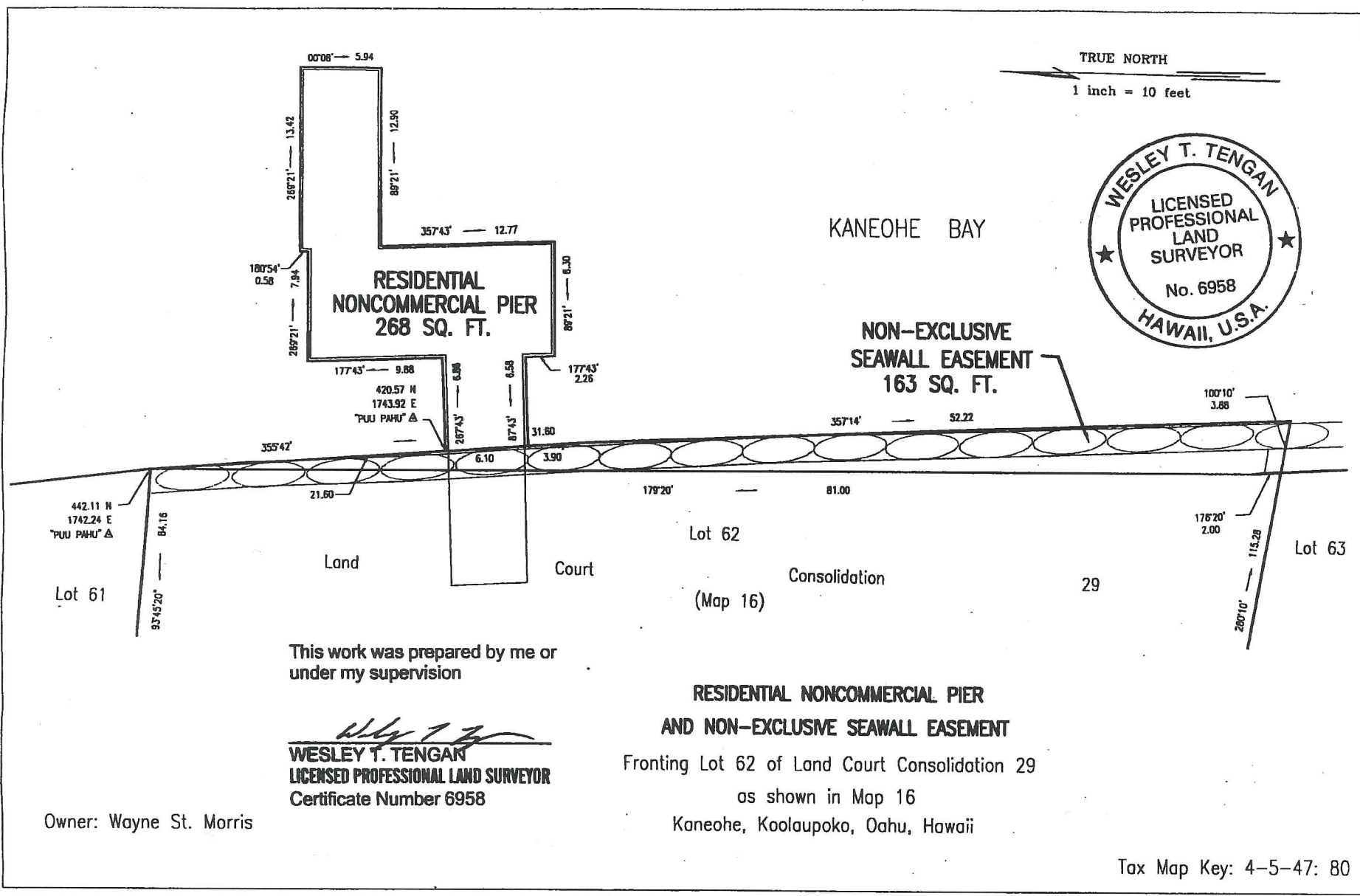


GILBERT S. COLOMA-AGARAN, Chairperson





ALICE



7.00 X 10.50

EXHIBIT 3



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION
P.O. BOX 821
HONOLULU, HAWAII 96809

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND
RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND DIVISION
STATE PARKS
WATER RESOURCE MANAGEMENT

Wayne and Annie St. Morris

File Number Encroachment: OA-03-12

SEP 19 2002

Kaneohe, HI 96744

Dear Mr. and Ms. St. Morris:

Subject: Shoreline Encroachment (Portion of Seawall) at
Kaneohe, Oahu. TMK: (1) 4-5-47:80

Coastal Lands Program staff has reviewed this encroachment case, which involves a portion of a seawall at Kaneohe Bay, Oahu. Based upon information you provided and a site visit by Coastal Lands Program staff on September 12, 2002 the seawall encroachment is 163 square feet in size. According to information you have provided the encroachment was in existence in 1962 when the property was purchased. There have been no improvements to the subject wall since that date.

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted. Staff visited the site to investigate the encroachment and to gather reconnaissance information to support a recommendation for either removal of the encroachment or issuance of an easement. Of primary importance are the Department's objectives to protect and preserve shoreline resources and shoreline access.

Surrounding Land Uses: It was observed during the site visit that surrounding uses are residential.

EXHIBIT C

Beach Resources: Coastal Lands Program (CLP) staff inspected the area. The shoreline in this area of Kaneohe Bay consists of mudflats. There is an existing pier off the parcel in question.

Public Access: There is no public shoreline access in near proximity to the parcel in question.

Effect of Removing the Encroachment on:

Beach Resources: Removal of the seawall would be inconsequential as there is no beach in the vicinity. Public recreation in the form of boating may take place offshore of the parcel.

Public Access: CLP staff has determined that public access would not be enhanced by removal of the two encroachment areas.

Affect on Adjacent Properties: None

The site visit by Coastal Lands Program staff visually confirmed that the seawall encroachment in question is long established and fitting with the general pattern of coastal development in this part of Kaneohe Bay. In addition, State survey records were reviewed, establishing that there are no previous shoreline certifications for the property. An aerial photo, taken in 1967, was also reviewed and the structure appears to have been in existence in this photo. As there are no benchmarks to establish the exact location of the shoreline prior to 1967 it is not possible to determine if the seawall in question was constructed within the Conservation District.

After reviewing the information available on this case the Coastal Lands Program will not be pursuing a Conservation District violation under Chapter 183C, HRS or any after the fact permitting for the subject structure. Coastal Lands Program staff has determined that the issuance of an easement for the encroaching portion of the seawall would have no adverse impacts on natural resources, including beach resources. Therefore, the Planning Branch has no objections to an easement request being processed for the seawall. The Oahu District Land Agent calculates the monetary amount required to dispose this use of State land through an easement. The landowner should note that they may be subject to the administrative penalty system for unauthorized use of State land pursuant to section 171-6, Hawaii Revised Statutes.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact the Coastal Lands Program at 587-0377. Please contact the Oahu District Land Agent regarding the processing of an easement.

Aloha,



Dierdre S. Mamiya
Administrator

Cc: Oahu Board Member
Oahu District Land Office ✓